

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. EDCV 18-01628-DSF (AFM)

Date: February 8, 2019

Title DAMEYION T. KENNEDY v. RAYMOND MADDEN

Present: The Honorable: ALEXANDER F. MacKINNON, U.S. Magistrate Judge

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

Proceedings (In Chambers): ORDER TO SHOW CAUSE WHY STAY SHOULD NOT BE VACATED

On October 30, 2018, this action was stayed pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003). The order granting a stay directed petitioner to present his unexhausted claims to the California Supreme Court within twenty-one (21) days from the date of the order. (ECF No. 16.)

On December 4, 2018, petitioner filed a “Notice of Compliance” with the Court’s order. (ECF No. 18.) Contrary to the order, however, petitioner did not file a petition in the California Supreme Court. Instead, petitioner filed a petition in the California Superior Court. On December 21, 2018, petitioner filed a status report indicating that the California Superior Court had denied his petition based upon procedural grounds. (ECF No. 18.) Further, petitioner requested that the Court “proceed with the litigation of the pending habeas corpus proceeding and request[s] this [C]ourt to set a briefing schedule.” (ECF No. 18 at 2.) In an order dated December 26, 2018, the Court sought clarification of petitioner’s intention, noting that it appeared that petitioner sought to vacate the stay and proceed on the basis of the original petition without amending it to include newly exhausted claims. (ECF No. 19.)

Petitioner responded to the Court’s request for clarification by stating “I intend to continue to pursue my state remedies with the stay in place and later move to amend in federal court.” (ECF No. 20.)

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Nothing in the record indicates that petitioner has complied with the October 30, 2018 order by filing a petition in the California Supreme Court. Presenting claims to the Superior Court is insufficient to satisfy the exhaustion requirement. Furthermore, reference to the docket of the California Supreme Court (*see* <http://appellatecases.courtinfo.ca.gov>) does not reveal any filing by petitioner.

Petitioner is directed to show cause why the stay entered in this case should not be vacated. Specifically, within twenty-one (21) days of the date of this order, petitioner shall file and serve a response clearly stating whether he has filed a petition in the California Supreme Court and, if not, explain why he has failed to do so. Absent good cause, petitioner's failure to comply with the Court's October 30, 2018 order may result in an order vacating the stay and directing respondent to file a response to the petition previously filed in this action.

It is so ordered.

Initials of Preparer

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